

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 2585	DATE	4/15/2002
CASE TITLE	Helmut Judt vs. Phillip Robertson, et al		




[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. Accordingly, because from the flawed nature of the notice "it appears that the district court lacks subject matter jurisdiction" (Section 1447(c)), and because here that defect is further exacerbated by FFE's failure to conform to the requirement of Section 1446(a) that all served defendants must join in any removal, this action is sua sponte remanded to the Circuit Court. And as authorized by this District Court's LR 81.2(b), the Clerk is directed to mail the certified copy of the remand order forthwith.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	<div style="text-align: center;">  APR 16 2002 APR 15 PM 3:10 Date/time received in central Clerk's Office </div>	number of notices	<div style="text-align: center;">  Document Number </div>
<input type="checkbox"/>	No notices required.		APR 16 2002	
<input type="checkbox"/>	Notices mailed by judge's staff.		date docketed	
<input type="checkbox"/>	Notified counsel by telephone.			
<input checked="" type="checkbox"/>	Docketing to mail notices.		docketing deputy initials	
<input checked="" type="checkbox"/>	Mail AO 450 form.		date mailed notice	
<input type="checkbox"/>	Copy to judge/magistrate judge.		mailing deputy initials	
SN		courtroom deputy's initials		

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¹ As 28 U.S.C. §1446(a) and other portions of the removal statutes reflect, the correct term is really "notice of removal." FFE's counsel's mistake in that respect is no doubt attributable to the statutory change nearly 15 years ago from the old "petition for removal" label to the current term--a surmise that seems to be confirmed by the opening paragraph of the Notice, in which FFE's counsel mistakenly "petition for this action...to be removed...." Incidentally, all further references to Title 28 provisions will simply take the form "Section --."

defendant Phillip Robertson ("Robertson"). As taught by Held v. Held, 137 F.3d 998, 1000 (7th Cir. 1998), quoting Guaranty Nat'l Title Co. v. J.E.G. Assocs., 101 F.3d 57, 59 (7th Cir. 1996):

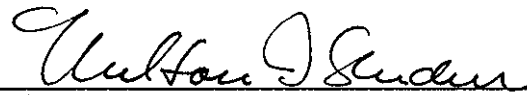
Of course, allegations of residence are insufficient to establish diversity jurisdiction. It is well-settled that "[w]hen the parties allege residence but not citizenship, the court must dismiss the suit."

In the instance of a removed action, of course, the appropriate order is not such a dismissal, but rather the remand of the action to the state court pursuant to Section 1447(c).

If what has been pointed out in the preceding paragraph were the only problematic aspect of the Notice, this Court would be disinclined to impose an additional \$150 filing fee obligation on FFE, because it would seem likely that the just-identified defect may be curable (it is after all most common for an individual's states of residence and citizenship to coincide, though that is not always the case). In most cases, then, this Court tempers the Held-Guaranty Nat'l directive by granting a limited-time opportunity to file a curative submission. But in this instance FFE has committed still another error: It impermissibly acted alone, for the Notice has neither been joined in by Robertson nor has any explanation been given for his absence (see Roe v. O'Donohue, 38 F.3d 298, 301 (7th Cir. 1994)).

Accordingly, because from the flawed nature of the Notice "it appears that the district court lacks subject matter jurisdiction" (Section 1447(c)), and because here that defect is

further exacerbated by FFE'S failure (albeit nonjurisdictional) to conform to the requirement of Section 1446(a) that all served defendants must join in any removal,² this action is sua sponte remanded to the Circuit Court as directed by Section 1447(c). And as authorized by this District Court's LR 81.2(b), the Clerk of Court is directed to mail the certified copy of the remand order forthwith.



Milton I. Shadur
Senior United States District Judge

Date: April 15, 2002

² Alternatively, a notice that provides an explanation of a defendant's excusable absence may do the job (see Roe).